



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,470	05/24/2001	Frederick L. Ross	067439.0119	2938

5073 7590 02/03/2006

BAKER BOTTS L.L.P.  
2001 ROSS AVENUE  
SUITE 600  
DALLAS, TX 75201-2980

EXAMINER

THEIN, MARIA TERESA T

ART UNIT	PAPER NUMBER
----------	--------------

3627

DATE MAILED: 02/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/865,470	<b>Applicant(s)</b> ROSS, FREDERICK L.	
	<b>Examiner</b> Marissa Thein	<b>Art Unit</b> 3627	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09-12-05</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's "Response Pursuant to 37 C.F.R. §1.111" filed on November 3, 2005 has been considered.

Applicant's response has overcome the Examiner's rejection under 35 USC 101.

Applicant's response by virtue of amendment to claims 8 and 18 has overcome the Examiner's rejection under 35 USC 112, second paragraph.

Claim 8 and 18 are amended. Claims 1–39 remain pending in this application.

#### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on September 12, 2005 is being considered by the examiner.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,085,172 to Junger in view of U.S. Patent No. 6,536,659 to Hauser et al.**

Regarding claim 1, Junger discloses a method of using a public communications network to manage the return of an item purchased by a consumer from a remote direct merchandiser, comprising the steps of:

Art Unit: 3627

- receiving a first communication at a return manager system (manufacturing side), the first communication comprising return request data from a local returns site (return side) (see at least col. 2, lines 41-46; col. 5, lines 5-35; Figures 4A-4B);
- providing a second communication from the returns manager system (manufacturing side) to the local return site (return side), the second communication comprising return validation data having at least a return validation code (return authorization number) (see at least col. 2, lines 46-52; col. 6, lines 30-36; col. 6, line 59- col. 7, line 6; col. 7, lines 54-59; col. 8, lines 18-21);
- validating the return by matching the return validation code (return authorization code, col. 8, lines 18-21) with a pre-authorization code (customer reference number) provided by the consumer to the local returns site (col. 7, lines 56-59) and;
- wherein the first and second communication using a public communication network (see at least col. 4, lines 39-54).

However, Junger does not disclose the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom the item was purchased. Junger discloses a customer reference number (pre-authorization code) which may be entered for an internal reference to identify the return authorization (col. 7, lines 57-59).

Hauser, on the other hand, teaches the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom who the item was purchased (col. 7, line 65 – col. 8, line 4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom the item was purchased, as taught by Hauser, in order to provide a more efficient process of returning a merchandise (Hauser (col. 2, lines 5-6).

Furthermore, Junger does not explicitly disclose the crediting an account of consumer. Junger discloses the system provides the dollar value of the product that is authorized for return. The dollar value may be based on the lower of 1) gross invoice price paid by the Dealer for the product, less the value of allowances and incentives given to the Dealer, or 2) vendor's net product pricing at the time of the return. The dealer may deduct the monetary value of authorized returns from any existing or future vendor invoices. (See col. 8, lines 34-42). Furthermore in Figure 5A, the batch return authorization label provides a "return promptly for credit" information. Moreover, Junger discloses after the retuned products arrive at the regional warehouse they are sorted and are shipped from the regional warehouse for credit (col. 3, lines 58-61)

Hauser, on the other hand, teaches the crediting an account of consumer for a return value of the retuned item (col. 2, lines 53-59).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include the crediting of an account of the consumer, as taught by Hauser, in order to provide a credit for the value of the merchandise being returned at any time (Hauser col. 2, lines 54-55).

Regarding claims 2-4 and 12-14, Junger discloses Internet; public network; and a combination of Internet access and public telephone access (see at least col. 4, lines 39-54).

Regarding claims 5-6 and 15-16, Junger discloses receiving a third communication at the returns manager system, the third communication comprising: a request for general returns information from the consumer and providing a fourth communication from the returns manager system to the consumer, the consumer, the fourth communication comprising data representing general returns information to the consumer; and website (see at least col. 2, lines 14-17; col. 2, lines 44-58; col. 5, lines 9-15; col. 6, lines 11-20; col. 6, lines 30-46; col. 7, lines 51-62).

Regarding 7, 10, 17 and 20, Junger discloses accessing return policy data representing disposal of the item as desired by the direct merchandiser; and website (see at least col. 5, lines 9-15; col. 6, lines 58-64; col. 7, lines 7-17; col. 8, lines 42-44).

Regarding claims 8-9 and 18-19, Junger substantially discloses the claimed invention, however, Junger does not explicitly disclose a pre-authorization code to the consumer and the step of receiving return request data from the local returns site; and using a website. Junger discloses the manufacturer providing a list of approved returns and unapproved returns along with a return authorization number (abstract).

Art Unit: 3627

Hauser, on the other hand, teaches a returns validation code to the consumer and the step of receiving return request data from the local returns site; and using a website (col. 8, lines 22-35).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include a return validation code step prior to the receiving return request data step and using a website, as taught by Hauser, in order to provide a more efficient process of returning a merchandise (Hauser (col. 2, lines 5-6).

Regarding claim 11, Junger discloses a method of using a public communications network to manage the return of an item purchased by a consumer from a remote direct merchandiser, comprising the steps of:

- receiving a first communication at a return manager system (manufacturing side), the first communication comprising return request data from a local shipper (see at least col. 2, lines 56-60; col. 4, lines 7-19);
- providing a second communication from the returns manager system (manufacturing side) to the local return site (return side), the second communication comprising return validation data having at least a return validation code (return authorization number) (see at least col. 2, lines 46-52; col. 6, lines 30-36; col. 6, line 59- col. 7, line 6; col. 8, lines 18-21);
- validating the return by matching the return validation code (return authorization code, col. 8, lines 18-21) with a pre-authorization code

Art Unit: 3627

(consumer reference number) provided by the consumer (col. 7, lines 56-59)

and;

- wherein the first and second communication using a public communication network (see at least col. 4, lines 39-54).

However, Junger does not disclose the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom the item was purchased. Junger discloses a customer reference number (pre-authorization code) which may be entered for an internal reference to identify the return authorization (col. 7, lines 57-59).

Hauser, on the other hand, teaches the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom the item was purchased (col. 7, line 65 – col. 8, line 4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom the item was purchased, as taught by Hauser, in order to provide a more efficient process of returning a merchandise (Hauser (col. 2, lines 5-6).

Furthermore, Junger does not explicitly disclose the crediting an account of consumer. Junger discloses the system provides the dollar value of the product that is authorized for return. The dollar value may be based on the lower of 1) gross invoice price paid by the Dealer for the product, less the value of allowances and incentives



Art Unit: 3627

given to the Dealer, or 2) vendor's net product pricing at the time of the return. The dealer may deduct the monetary value of authorized returns from any existing or future vendor invoices. (See col. 8, lines 34-42). Furthermore in Figure 5A, the batch return authorization label provides a "return promptly for credit" information. Moreover, Junger discloses after the returned products arrive at the regional warehouse they are sorted and are shipped from the regional warehouse for credit (col. 3, lines 58-61)

Hauser, on the other hand, teaches the crediting an account of consumer for a return value of the returned item (col. 2, lines 53-59).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include the crediting of an account of the consumer, as taught by Hauser, in order to provide a credit for the value of the merchandise being returned at any time (Hauser col. 2, lines 54-55).

Regarding claim 21, Junger discloses a method for managing a return of an item, comprising: receiving, at a local returns cite, a returned item purchased from an off-site retailer by a consumer (col. 3, lines 29-40; col. 3, lines 44-57); accessing a returns manager system (manufacture side) that stores a return policy of the off-site retailer, the return policy comprising one or more guidelines that must be met to validate a return of the returned item (vendors specific returns policy and guidelines, col. 8, lines 42-44; requirements of a company's return policy, col. 1, lines 29-30); and validating the return by determining that the return guidelines are met by the returned item (col. 1, lines 26-29; col. 8, lines 42-44).

However, Junger does not disclose the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom the item was purchased. Junger discloses a customer reference number (pre-authorization code) which may be entered for an internal reference to identify the return authorization (col. 7, lines 57-59).

Hauser, on the other hand, teaches the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom the item was purchased (col. 7, line 65 – col. 8, line 4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom who the item was purchased, as taught by Hauser, in order to provide a more efficient process of returning a merchandise (Hauser (col. 2, lines 5-6).

Furthermore, Junger does not explicitly disclose the crediting an account of consumer. Junger discloses the system provides the dollar value of the product that is authorized for return. The dollar value may be based on the lower of 1) gross invoice price paid by the Dealer for the product, less the value of allowances and incentives given to the Dealer, or 2) vendor's net product pricing at the time of the return. The dealer may deduct the monetary value of authorized returns from any existing or future vendor invoices. (See col. 8, lines 34-42). Furthermore in Figure 5A, the batch return authorization label provides a "return promptly for credit" information. Moreover, Junger

Art Unit: 3627

discloses after the returned products arrive at the regional warehouse they are sorted and are shipped from the regional warehouse for credit (col. 3, lines 58-61)

Hauser, on the other hand, teaches the crediting an account of consumer for a return value of the returned item (col. 2, lines 53-59).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include the crediting of an account of the consumer, as taught by Hauser, in order to provide a credit for the value of the merchandise being returned at any time (Hauser col. 2, lines 54-55).

Regarding claims 22-28, Junger discloses receiving the returned item at a local returns site, the local returns site off-site from the retailer (col. 3, lines 44-55); providing pre-authorization of the return to the consumer before the item is received at the local returns site (col. 7, lines 56-58); transmitting a first communication comprising return request data to the returns manager system (manufacturing side) (see at least col. 2, lines 56-60; col. 4, lines 7-19); transmitting a second communication comprising return validation data from the returns manager system (manufacturing side), the return validation data comprising a return validation code (return authorization number) (see at least col. 8, lines 18-21); a pre-authorization code provided to the returns manager system by the consumer (col. 7, lines 56-58); accessing a rules-based disposition policy associated with the off-site retailer (col. 5, lines 15-39); selecting a disposition method for the returned product based on the rules-based disposition policy associated with the retailer (see at col. 5, lines 15-39; col. 8, lines 42-44; col. 1, lines 29-30); and sending a

Art Unit: 3627

communication from the returns system to the retailer identifying the item being returned by the consumer (6, lines 30-41; col. 6, lines 64-67; col. 7, lines 11-17).

Regarding claim 29, Junger discloses a system for managing a return of merchandise comprising; a retailer comprising a remote direct merchandiser from which one or more items may be purchased by a consumer (col. 3, lines 29-47; col. 2, lines 14-26); a returns manager system communicatively coupled to the retailer over a public communication network (col. 3, lines 29-55; Figure 3; col. 2, lines 14-26); receive a first communication identifying at least an item of merchandise (col. 2, lines 41-49; col. 5, lines 5-35; Figures 4A-4B; col. 2, lines 14-26); identify the retailer as the remote direct merchandiser from which at least one returned item was purchased by the consumer (col. 3, lines 29-55; col. 2, lines 14-26); and send a second communication to the retailer identifying the return (col. 3, lines 29-55; col. 2, lines 14-26).

However, Junger does not disclose item of merchandise to be returned by the consumer in the future; and the item of merchandise to be returned by the consumer to provide the retailer with advance notification of the return. Junger discloses a customer reference number (pre-authorization code) which may be entered for an internal reference to identify the return authorization (col. 7, lines 57-59).

Hauser, on the other hand, teaches item of merchandise to be returned by the consumer in the future; and the item of merchandise to be returned by the consumer to provide the retailer with advance notification of the return. Junger discloses a customer reference number (pre-authorization code) may be entered for an internal reference to identify the return authorization (col. 7, lines 57-59).

Hauser, on the other hand, teaches the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser form who the item was purchased (abstract; col. 7, line 65 – col. 8, line 4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include the pre-authorization code obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser form who the item was purchased, as taught by Hauser, in order to provide a more efficient process of returning a merchandise (Hauser (col. 2, lines 5-6).

Regarding claims 30 and 36, Junger substantially disclose the claimed invention, however, it does not disclose update an account to reflect the status of the item as return pending and credit an account of the consumer. Junger discloses the system provides the dollar value of the product that is authorized for return. The dollar value may be based on the lower of 1) gross invoice price paid by the Dealer for the product, less the value of allowances and incentives given to the Dealer, or 2) vendor's net product pricing at the time of the return. The dealer may deduct the monetary value of authorized returns from any existing or future vendor invoices. (See col. 8, lines 34-42). Furthermore in Figure 5A, the batch return authorization label provides a "return promptly for credit" information. Moreover, Junger discloses that if a request is approved, a return authorization number and update the batch header to indicate the approved status (col. 8, lines 18-21).

Hauser, on the other hand, teaches update an account to reflect the status of the item as return pending and credit an account of the consumer (col. 2, lines 49-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Junger, to include the update an account to reflect the status of the item as return pending and credit an account of the consumer, as taught by Hauser, in order to track the handling of the returned merchandise (Hauser col. 2, lines 66-67).

Regarding claims 31-35 and 37-39, Junger disclose the first communication is received from a local returns site communicatively coupled to the returns manager system (see at least col. 2, lines 41-46; col. 5, lines 5-35; Figures 4A-4B); the local returns site is operatively to receive the returned item from the consumer (col. 7, lines 56-58; Figure 4G); the local returns site is operable to receive from the returned item from a shipper (col. 4, lines 2-6); wherein the local returns is operable to process the returned item (col. 5, lines 5-8; col. 7, lines 18-31); receive a third communication from the local returns site, which comprises return validation data (col. 2, lines 46-52; col. 6, lines 30-36; col. 6, line 59- col. 7, line 6; col. 7, lines 54-59; col. 8, lines 18-21); transmit a fourth communication to the local returns site, which comprises return validation data having at least a return validation code (col. 2, lines 46-52; col. 6, lines 30-36; col. 6, line 59- col. 7, line 6; col. 7, lines 54-59; col. 8, lines 18-21); Internet (internet or the like); telephone network (Figure 3); and the first communication identifies an offer associated with the returned item (col. 1, lines 53-col. 2, line 6; col. 2, lines 3-6; col. 2, lines 14-26).

***Response to Arguments***

Applicant's arguments filed November 3, 2005 have been fully considered but they are not persuasive.

Applicant remarks that "Junger cannot be said to disclose, teach, or suggest the step of validating the return by matching the return validation code with a pre-authorization code, as recited Claim 1". Furthermore, Applicant's remark that "Hauser does not cure the deficiencies of Junger as discussed above".

The Examiner notes that the combination of Junger and Hauser discloses the step of validating the return by matching the return validation code with a pre-authorization code. Junger discloses a customer reference number which is entered to identify the return authorization (col. 5, lines 8-9). Once the request is approved a return authorization number (RA number) is created (col. 8, lines 18-22). In Figure 4H, a return authorization status screen is shown. The screen shows a lists of the authorization status, customer reference number with a return authorization number.

Such customer reference number with a return authorization number is the step of validating the return by matching the return validation code with a pre-authorization code.

The Examiner then turns to Hauser to teach the pre-authorization obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom who the item was purchased. In col. 7, line 67 – col. 8, line 5, Hauser teaches a merchant electing to pre-authorize customers to return any purchased

Art Unit: 3627

merchandise with which the customer are dissatisfied, without the need to obtain further authorization for the return.

Such a merchant electing to pre-authorize customers to return any purchased merchandise are considered the pre-authorization obtained by the consumer and indicating prior approval of the return by a remote direct merchandiser from whom who the item was purchased.

Applicant remarks pertaining to claims 11 and 21.

The Examiner draws applicant's attention to the response above, pertaining to claim 1.

Applicant remarks "that such a piecemeal rejection fails to consider the particular combination of features recited in Applicant's claim 29. Rather, such a rejection illustrates that the Examiner has merely pieced together disjointed portions of unrelated references to reconstruct Applicant's claims".

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant remarks that "Hauser does not disclose or teach or suggest identifying the item of merchandise to be returned by the consumer to provide the retailer with advance notification of the return, as recited in claim 29".



The Examiner notes that Hauser teaches the identifying the item of merchandise to be returned by the consumer to provide the retailer with advance notification of the return. In col. 7, line 67 – col. 8, line 5, Hauser teaches a merchant electing to pre-authorize customers to return any purchased merchandise with which the customer are dissatisfied, without the need to obtain further authorization for the return.

Such a merchant electing to pre-authorize customers to return any purchased merchandise are considered the identifying the item of merchandise to be returned by the consumer to provide the retailer with advance notification of the return.

Applicant remarks that the product return center location of Junger does not communicate with the consumer or vice versa.

The Examiner notes that Junger does disclose the communication with the consumer or vice versa. In col. 7, lines 53-59 and Figure 4F, Junger discloses the entering of the contact information of a person who should be contacted with information or questions concerning the return request and a customer reference number.

Such entering contact information of a person who should be contacted with information or questions concerning the return request and a customer reference number is considered the product return center communicating with the consumer or vice versa.

Applicant remarks that “Junger and Hauser do not provide a suggestion to combine these two references in the manner suggested by the Examiner”.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation is found in Hauser in col. 2, lines 5-6.

Applicant remarks that "it is improper for an Examiner to use hindsight having read the Applicant's disclosure to arrive at an obviousness rejection".

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marissa Thein whose telephone number is 571-272-6764. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alex Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3627

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mtot  
January 23, 2006

*Michael Cuff* 1/23/06  
MICHAEL CUFF  
PRIMARY EXAMINER